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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/824,580 | 04/14/2004 | Christopher P. Geisert | GEI01 P-300 | 6538 |

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EXAMINER

LEWIS, KIM M

ART UNIT PAPER NUMBER

3743

DATE MAILED: 09/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/824,580

Applicant(s)

GEISERT, CHRISTOPHER P.

Examiner

Kim M. Lewis

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-20 is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-12 and 14-17 is/are rejected.
- 7) ☒ Claim(s) 4 and 13 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>4/14/04</u> . | 6) <input checked="" type="checkbox"/> Other: <u>Detailed Action</u> . |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 4/14/04 has been received and made of record in the application file wrapper. Note the acknowledged form PTO-1449 enclosed herewith.

Specification

2. The disclosure is objected to because of the following informalities: Page 3, lines 1 and 5 of para. [0015], recite a "convex portion", and then line 7 of the same para. recites "convex region". The applicant is advised to remain consistent when designating and then referring to reference characters.

Appropriate correction is required.

Claim Suggestions

3. While the metes and bounds of claims 1-3, 5 10 and 19 are appreciated, the following informalities are deserving of correction:

Claim 1, line 2, "an" should read --a--;

Claim 2, line 2, "said thoracic support section" lacks antecedent basis. The phrase should read --said thoracic support portion--;

Claim 2, line 2, "said inclination" lacks antecedent basis. The phrase should read --said inclined surfaces extending from a lumbar region to the cervical region--;

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Claim 3, line 2, "said arcuate spinal region" lacks antecedent basis;

Claim 5, line 3, "persons" should read --person's--;

Claim 10, line 4, "said thoracic portion" lacks antecedent basis; and

Claim 19, "said inclined thoracic support section " should read -- said inclined thoracic support portion--.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,535,495 ("Oldfield").

As regards claim 1, Oldfield discloses a back rest cushion, thereby being an upper body support device, comprising a thoracic support portion including a cervical region, a shoulder region, and a spinal region; and said spinal region including a convex arcuate section on an upper surface thereof (Figs. 1-4, col. 3, line 39-col. 4, line 59).

As regard claim 2, Oldfield discloses a backrest cushion wherein said thoracic support section includes an inclined surface. The inclined surface extends from a lumbar region to said cervical region.

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6. Claims 1- 3, 5-12 and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5, 390, 682 ("Iams").

As regards claims 1-3, 5-12 and 14-17, Iams discloses a soft tissue support system that anticipates applicant's claimed invention. More specifically, as can be seen from Figs. 1, 10-14 and 16-19, Iams discloses a thoracic support, a lumbar support portion (30), a thoracic support portion (70), occipital (head) support portion (110), cervical support (140) and a pair of shoulder support pads (150) all of which comprise applicant's claimed features.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oldfield in view of Iams.

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As regards claim 5, Oldfield is silent as to a head support portion adjacent the thoracic portion wherein a person's head may be supported. However, Iams discloses pillow-like body supports, which comprises a portion for the upper body and a separate portion for the head for use adjacent the upper body portion (Fig. 1) in order to provide different types of treatment (e.g., traction or support) to the user.

It would have been obvious to one having ordinary skill in the art to modify the upper body support device of Oldfield by providing an occipital (head) support adjacent the upper body support in order to support the head as shown in Figs. 1 and 11 of Iams.

As can be seen from Fig. 11 of Iams, the occipital support includes a concave region.

Allowable Subject Matter

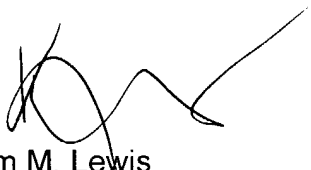
10. Claims 4, 13 and 18-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is 703.308.1191. The examiner can normally be reached on Mondays to Thursdays from 5:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on 703.308.0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kim M. Lewis
Primary Examiner
Art Unit 3743

kml
September 28, 2004